

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

THE MICHIGAN DEPARTMENT OF  
NATURAL RESOURCES AND  
ENVIRONMENT,

Plaintiff

Case No. 10- 1135 CE( )

HON. JOYCE DRAGANCHUK (P )

v

BLARNEY CASTLE OIL COMPANY, INC.,  
and BLARNEY CASTLE, INC.

Defendant

---

MICHAEL A. COX – Attorney General  
John P. Mack (P28407)  
Assistant Attorney General  
Van Wagoner Building – 4<sup>th</sup> Floor  
425 West Ottawa Street  
Lansing, MI 48913  
Telephone (517) 373-0626  
-Attorneys for Plaintiff

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**COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL FINES, AND DAMAGES**

Under MCR 2.113(C)(2)(b), the Court is advised that there is no other Civil Action between these parties or other parties arising out of the transaction or occurrence alleged in this Complaint.

Now comes the Michigan Department of Natural Resources and Environment (DNRE), by and through its counsel, and states the following in support of this Complaint against Blarney Castle Oil Co., Inc. (BCOC) and Blarney Castle, Inc. (BCI);

## Statement of the Case

1. This civil action is brought under the common law, and provisions of the Natural Resources and Environmental Protection Act (NREPA) 1994 PA 451 as amended, specifically Part 201 and Part 213, MCL 324.20101 *et seq.*, and MCL 324.21301 *et seq.* There have been releases of petroleum products from an underground storage tank system at Ralph's Marathon located at 202 East 7<sup>th</sup> Street in the City of Ewart. ("Ralph's Marathon" or the "Property"). Defendants, Blarney Castle Oil Co., Inc. (BCOC) and Blarney Castle, Inc. (BCI) are owners and operators of the underground storage tank system and are responsible for an activity causing a release of hazardous substances. The concentrations of the petroleum based hydrocarbons were approximately 190 times the applicable risk based criteria for groundwater surface water interface upgradient of the nearby Muskegon River. Defendants have failed to remediate the Site as required by Part 213.

2. Pursuant to Part 213 DNRE is seeking a permanent injunction requiring Defendants to perform response activities and to address the releases at the Property.

3. Pursuant to the common law governing the abatement of nuisances, and MCL 600.2940, DNRE is seeking declaratory relief requiring Defendants to perform response activities at the Site to treat, contain, and otherwise cleanup petroleum based contamination in the soils and groundwater.

4. DNRE is also seeking civil fines pursuant to MCL 324.21323(1)(d).

5. DNRE seeks to recover any costs lawfully incurred by the State of Michigan under MCL 324.20137(1)(b) and MCL 324.21323(1)(b).

### Jurisdiction and Venue

6. This Court has jurisdiction over the subject matter of this action under MCL 324.20137(1) and MCL 324.21323(1).

7. This Court also has jurisdiction to enter Declaratory Orders requiring the abatement of nuisances under MCL 600.2940(1).

8. Venue is proper in Ingham County under MCL 324.20137(3) and 324.21323(2).

### The Parties

9. DNRE is an agency of the government of the State of Michigan, formed by the merger of the Michigan Department of Natural Resources and Michigan Department of Environmental Quality, and is authorized to bring this action under NREPA Part 201 and Part 213.

10. Defendant BCOC was organized and chartered under the laws of the State of Michigan on June 28, 1955 and is now an active Michigan for profit corporation, assigned Corporate ID No. 134744 by the Michigan Department of Energy, Labor & Economic Growth – Corporation Division (DELEG).

11. Defendant BCI was organized and chartered under the laws of the State of Michigan on May 4, 1964 and is now an active Michigan for profit corporation, assigned Corporate ID No. 135744 by the DELEG.

12. BCOC is a "person" as defined by NREPA MCL 324.301(h).

13. BCI is a "person" as defined by NREPA MCL 324.301(h).

### Common Allegations

14. Ralph's Marathon was a gasoline service station located at 202 East 7<sup>th</sup> Street in the City of Evert.
15. On or about September 1982, BCI, as vendee, purchased Ralph's Marathon under a Land Contract from the William C. Andresen Realty Co., as vendor.
16. On the date that BCI acquired its equitable title under the Land Contract, certain underground storage tank systems (UST), more fully described in the following paragraphs of this Complaint, were fixtures annexed to the real property commonly known as Ralph's Marathon.
17. BCI obtained legal title to the Property on or about November 1991 pursuant to a Warranty Deed.
18. On the date that BCI obtained legal title to the Property, the USTs, more fully described in the following paragraphs of this Complaint, were fixtures annexed to the real property commonly known as Ralph's Marathon.
19. The USTs were used for the storage and selling of petroleum products to retail customers.
20. Between 1986 and 1997, BCOC had registered the USTs under MCL 324.21102(1) and its predecessor statutes.
21. The Property was also operated as a gasoline service station by Mr. Ralph Roberts between 1981 and 1995.
22. From at least September 1982 up until December 1995, Mr. Roberts operated the gasoline service station known as Ralph's Marathon at the direction of the agents, officers and shareholders of both BCOC and BCI.

23. A plan view diagram depicting the Property in relation to 7<sup>th</sup> Street (a/k/a "U.S. 10"), River Street, and the Muskegon River is attached as Exhibit A.

24. Prior to the date of this Complaint, several USTs were located at the Property. The USTs were removed from the Property by BCOC on or about April 28, 1997.

25. The USTs located at the Property included;

a. Two (2) 8,000 gallon unleaded gasoline USTs located on the east side of the "Ralph's Marathon Building" depicted in Exhibit C.

b. One (1) 4,000 gallon unleaded plus gasoline UST located on the west side of the "Ralph's Marathon Building" depicted in Exhibit C.

c. One (1) 2,000 gallon premium gasoline UST located on the west side of the "Ralph's Marathon Building" depicted in Exhibit C

d. One (1) 1,100 gallon UST containing unknown product located on the west side of the "Ralph's Marathon Building" depicted in Exhibit C.

e. One (1) 550 gallon white gas UST located on the west side of the "Ralph's Marathon Building" depicted in Exhibit C.

f. One (1) 550 gallon kerosene UST located on the west side of the "Ralph's Marathon Building" depicted in Exhibit C.

g. One (1) 550 gallon diesel fuel UST located on the west side of the "Ralph's Marathon Building" depicted in Exhibit C.

h. One (1) 300 gallon waste oil tank, located inside, at the southern portion of the "Ralph's Marathon Building" depicted in Exhibit C.

26. The piping, valves and UST's located at the Property constitute "underground storage tank systems" as defined by MCL 324.21303(i).

27. On January 18, 1995, the Michigan Department of Natural Resources (k/n/a MDNRE) Underground Storage Tank Division, was notified of a release of a regulated substance from the UST's at Ralph's Marathon.

28. The release was reported following maintenance of a pump valve when a break in a supply line was discovered. Soil contamination was subsequently discovered in a soil boring taken adjacent to the UST systems.

29. The authority, powers, duties and functions of the Underground Storage Tank Division were transferred to the Director of the Michigan Department of Environmental Quality, pursuant to E.R.O. 1995-16 found at MCL 324.99901.

30. Samples at Ralph's Marathon taken on April 28, 1997 by employees, agents or contractors of BCOC found soil contaminated with hazardous substances as defined by MCL 324.20101(t)(i)(ii), below and in the vicinity of the former UST's.

31. A confirmed release as defined by MCL 324.20101(bb) and MCL 324.21303(e) was reported to DNRE for Ralph's Marathon on January 18, 1995 and August 14, 1997.

32. The confirmed release was based on the discovery of petroleum contaminated soil beneath and proximal to the underground storage tank systems located at the Property.

33. Benzene, toluene, ethylbenzene, and xylene (BTEX) are components of petroleum products sold at retail from the Property between at least 1982 and 1995.

34. BTEX are hazardous substances as defined by MCL 324.20101(t)(iv).

35. BTEX are regulated substances as defined by MCL 324.21303(d)(ii).

36. The Property is approximately 550 feet hydraulically upgradient from the Muskegon River.

37. Ralph's Marathon is a "Facility" as defined by MCL 324.20101(1)(o) and a "Site" as defined by MCL 324.20101(1)(hh).

38. Ralph's Marathon is also a "Site" as defined by MCL 324.21303(f).

39. Between 2000 and 2006, the DNRE conducted interim response activities including investigating soil and groundwater contamination at and emanating from the Property.

40. The DNRE investigation detected concentrations of regulated substances in the groundwater on the Property and off the Property.

41. The concentrations of the petroleum based hydrocarbons were approximately 190 times the applicable risk based criteria for groundwater surface water interface upgradient of the nearby Muskegon River.

42. DNRE has repeatedly notified Defendants of their obligations under the law and requested Defendants to undertake the required response activities at the Facility. These notification include letters sent on January 24, 1995; February 16, 1996; March 7, 1997; July 24, 1997; August 26, 1997; May 4, 1999; August 27, 1999; November 29, 2000; June 19, 2002 and May 15, 2007. To date, Defendants have failed to comply with Parts 201 and 213.

43. On May 15, 2007 DNRE notified Defendants that they were liable for the costs incurred by DNRE and DNRE requested reimbursement of the costs. The letter also ordered Defendants to undertake the necessary and appropriate actions to remediate contamination both at the Property and off the Property.

44. As of June 4, 2009 the DNRE has spent \$388,197.68 in response activity costs at and near Ralph's Marathon.

#### Count I-Liability under Part 201

45. DNRE restates ¶¶1 through 44, word for word.

46. MCL 324.20126(1), provides, in part:

Notwithstanding any other provision or rule of law and except as provided in subsections (2), (3), (4), and (5) and Section 20128, the following persons are liable under this part:

\*\*\*

(a) The owner or operator of a facility if the owner or operator is responsible for an activity causing a release or threat of release.

(b) The owner or operator of a facility at the time of disposal of a hazardous substance if the owner or operator is responsible for an activity causing a release or threat of release.

47. BCOC was, at all times alleged in this Complaint, an "operator" of the facility, as defined by MCL 324.20101(1)(y).

48. BCI was, at all times alleged in this Complaint, an "owner" of the facility, as defined by MCL 324.20101(1)(z).

49. BCOC was, at all times alleged in this Complaint, an "owner" of the underground storage tank system, as defined by MCL 324.21303(b).

50. BCOC was, at all times alleged in this Complaint, an "operator" of the underground storage tank system, as defined by MCL 324.21303(a).

51. BCI was, at all times alleged in this Complaint, an "owner" of the property on which an underground storage tank system, as defined by MCL 324.21303(b) was located.

52. There have been "releases" or "threatened releases" of "hazardous substances" into the environment at the Property, within the meaning of MCL 324.20101(1)(bb), MCL 324.20101(1)(ii), and MCL 324.20101(1)(t).

53. The Defendants are liable persons under MCL 324.20126 as owners and operators who are responsible for an activity causing a release of a hazardous substance.

54. MCL 324.20137(1) provides in part:

(1) In addition to the relief authorized by law, the attorney general may, on behalf of the State, commence a civil action seeking one (1) or more of the following:

(a) Temporary or permanent injunctive relief necessary to protect the public health, safety, or welfare, or the environment from the release or threat of release.

(b) Recovery of State response activity costs pursuant to Section 20126a.

\*\*\*

(d) A declaratory judgment on liability for future response costs and damages.

\*\*\*

(k) Any other relief necessary for enforcement of this part.

55. The DNRE has lawfully incurred, and is continuing to lawfully incur, response activity costs arising from releases or the threat of releases at the Property.

56. The Defendants are liable to the State of Michigan for all response activity costs lawfully incurred by the DNRE relating to the releases or threatened releases of hazardous substances at the Property.

**Count II-Liability Under Part 213**

57. DNRE restates ¶¶1 through 56, word for word.

58. Section 21303(a) provides that, "[o]perator means a person who is presently, or was at the time of a release, in control of, or responsible for, the operation of an underground storage tank system and who is liable under part 201." MCL 324.21303(a).

59. Under §21303(b) an "[o]wner means a person who holds, or at the time of a release who held, a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is located including, but not limited to, a trust, vendor, vendee, lessor, or lessee and who is liable under part 201." MCL 324.21303(b).

60. There has been a "release" at the Property within the meaning of MCL 324.21303(e).

61. Defendants are "operators" and "owners" as defined in MCL 324.21303(a) and MCL 324.21303(b).

62. Ralph's Marathon is a "Site" within the meaning of MCL 324.21303(f).

63. Defendants have not performed all response activities as required under MCL 324.21307(2) or (3), nor has a consultant retained by the Defendants performed all of these response activities.

64. The Defendants have failed to comply with the requirements of Part 213.

65. The Defendants have failed to submit the required Final Assessment Report (FAR) for the confirmed UST system releases as required by MCL 324.21311a, and despite repeated requests by the DNRE.

66. Defendants have not developed a corrective action plan to the extent required under §21309a.

67. The DNRE has incurred costs for performing interim response activities.

68. MCL 324.21323 of Part 213 states:

(1) The attorney general may, on behalf of the department, commence a civil action seeking any of the following:

(a) A temporary or permanent injunction.

(b) Recovery of all costs incurred by the state for taking corrective action.

\*\*\*

(d) A civil fine of not more than \$10,000.00 for each underground storage tank system for each day of noncompliance with a requirement of this part or a rule promulgated under this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the part or rule.

69. The Defendants are liable to the State for response activity costs lawfully incurred by the State related to releases from an underground storage tank system at the Property.

70. Defendants are liable to the State for civil fines of up to \$10,000.00 for each underground storage tank system for each day of non-compliance with any requirement under Part 213 of the NREPA.

### Count III-Public Nuisance

71. DNRE restates ¶¶1 through 70, word for word.

72. The release of petroleum product from USTs owned and operated by the Defendants, the infiltration of the components of the petroleum products into the soil and groundwater under the Property, and the subsequent migration of those components off the Property and towards the Muskegon River constitute a threat to the health and safety to the public in that the components in sufficient concentrations are carcinogenic agents, and if in their vapor form infiltrate basements, constitute an explosion hazard.

73. The release of petroleum product from USTs owned and operated by the Defendants, the infiltration of the components of the petroleum products into the soil and groundwater under the Property, and the subsequent migration of those components off the Property and towards the Muskegon River constitutes a nuisance.

74. Notwithstanding that DNRE has requested that Defendants undertake action to abate the nuisance, Defendants began operation of a treatment system at the Property in November 2009, but have otherwise failed and refused to undertake actions to abate the nuisance.

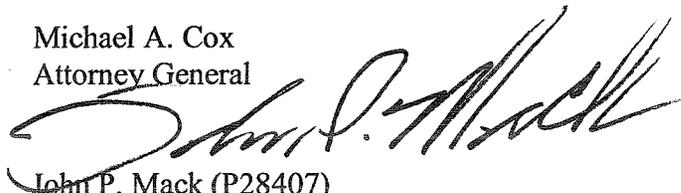
**Relief Requested**

WHEREFORE, DNRE prays that the court enter its order granting the following relief;

- A. Grant an injunction requiring the Defendants to fully comply with Parts 201 and 213 including but not limited to §§ 21304b, 21307, 21307a, 21309a, 21311a, and 21312a of Part 213.
- B. Order the Defendants to reimburse the State of Michigan for response activity costs it has incurred and enter a declaratory judgment finding the Defendants liable for all future costs incurred by the State relating to the Site.
- C. Grant an injunction requiring the Defendants to perform all further response activities necessary to protect the public health, safety, and welfare and the environment from the release or threat of release of hazardous substances at the Property.
- D. Order the Defendants to take such actions as may be necessary to abate the nuisance.
- E. Order Defendants to pay civil fines of up to \$10,000.00 for each UST system, for each day of the continuing violations of Part 213.
- F. Award DNRE costs and attorneys fees in this action.
- G. Award any further relief as the Court deems just and proper.

Respectfully submitted,

Michael A. Cox  
Attorney General

A handwritten signature in black ink, appearing to read "John P. Mack". The signature is written in a cursive style with a large initial "J" and "M".

John P. Mack (P28407)  
Assistant Attorney General  
Van Wagoner Building – 4<sup>th</sup> Floor  
425 West Ottawa Street  
Lansing, Michigan 48913  
Telephone: (517) 373-0626  
Mobile: (231) 357-5912  
Fax: (517) 335-6586  
E-Mail: [mackj2@michigan.gov](mailto:mackj2@michigan.gov)

Dated: September 20, 2010

**List of Exhibits Attached to the Complaint**

A. Northern Environmental plan view diagram, scale 1" = 50', Revised by D.

McNabb Date: December 28, 2005

<b>STATE OF MICHIGAN</b> JUDICIAL DISTRICT 30th JUDICIAL CIRCUIT COUNTY PROBATE	<b>SUMMONS AND COMPLAINT</b>	<b>CASE NO.</b> 10-1135 CE
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**Court address** 313 West Kalamazoo Street, Lansing, MI 48901 **Court telephone no.** (517) 483-6500

Plaintiff's name(s), address(es), and telephone no(s).  
 The Michigan Department of Natural Resources and Environment,

v

Defendant's name(s), address(es), and telephone no(s).  
 JOYCE DRAGANCHUK  
 BLARNEY CASTLE, INC.  
 c/o Dennis B. McCarthy, Resident Agent  
 P.O. Box 246  
 12218 West Street  
 Bear Lake, MI 49614

Plaintiff's attorney, bar no., address, and telephone no.  
 John P. Mack (P28407)  
 Assistant Attorney General  
 Van Wagoner Building-4th Floor  
 425 West Ottawa Street  
 Lansing, MI 48913 517-373-0626

**SUMMONS NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:  
 1. You are being sued.  
 2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). (MCR 2.111(C))  
 3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued <b>SEP 20 2010</b>	This summons expires <b>DEC 20 2010</b>	Court clerk <b>MIKE BRYANTON</b>
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\*This summons is invalid unless served on or before its expiration date.  
 This document must be sealed by the seal of the court.

**COMPLAINT** *Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.*

**Family Division Cases**

- There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
  - An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in \_\_\_\_\_ Court.
- The action  remains  is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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**General Civil Cases**

- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
  - A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in \_\_\_\_\_ Court.
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**VENUE**

Plaintiff(s) residence (include city, township, or village) Lansing, MI	Defendant(s) residence (include city, township, or village) Bear Lake, MI
Place where action arose or business conducted	

9-20-2010  
Date

John P Mack by HC/ass  
Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

**PROOF OF SERVICE**

**SUMMONS AND COMPLAINT**

Case No. 10-\_\_\_\_\_ CE \_\_\_\_\_

**TO PROCESS SERVER:** You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

**CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE**

**OFFICER CERTIFICATE**

OR

**AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

- I served personally a copy of the summons and complaint,
- I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with \_\_\_\_\_

List all documents served with the Summons and Complaint

\_\_\_\_\_ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Mileage fee	Total fee
\$		\$	\$

Signature \_\_\_\_\_

Name (type or print) \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_ County, Michigan.  
Date

My commission expires: \_\_\_\_\_ Date Signature: \_\_\_\_\_  
Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

**ACKNOWLEDGMENT OF SERVICE**

I acknowledge that I have received service of the summons and complaint, together with \_\_\_\_\_ Attachments

\_\_\_\_\_ on \_\_\_\_\_  
Day, date, time

\_\_\_\_\_ on behalf of \_\_\_\_\_

Signature

<b>STATE OF MICHIGAN</b> JUDICIAL DISTRICT 30th JUDICIAL CIRCUIT COUNTY PROBATE	<b>SUMMONS AND COMPLAINT</b>	<b>CASE NO.</b> 10- <u>1135</u> CE _____
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Court address Court telephone no.  
 313 West Kalamazoo Street, Lansing, MI 48901 **JOYCE DRAGANCHUK** (517) 483-6500

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 The Michigan Department of Natural Resources and Environment,

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 c/o Dennis B. McCarthy, Resident Agent  
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 Bear Lake, MI 49614

Plaintiff's attorney, bar no., address, and telephone no.  
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 Assistant Attorney General  
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3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued <u>SEP 20 2010</u>	This summons expires <u>DEC 20 2010</u>	Court clerk <b>MIKE BRYANTON</b>
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Docket no.	Judge	Bar no.
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**VENUE**

Plaintiff(s) residence (include city, township, or village) Lansing, MI	Defendant(s) residence (include city, township, or village) Bear Lake, MI
Place where action arose or business conducted	

9-20-2010  
 Date

John P. Mack  
 Signature of attorney/plaintiff

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**PROOF OF SERVICE**

**SUMMONS AND COMPLAINT**

Case No. 10-\_\_\_\_\_CE\_\_\_\_\_

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**CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE**

**OFFICER CERTIFICATE**

**OR**

**AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

- I served personally a copy of the summons and complaint,
- I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with \_\_\_\_\_

List all documents served with the Summons and Complaint

\_\_\_\_\_ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Mileage fee	Total fee
\$		\$	\$

Signature \_\_\_\_\_

Name (type or print) \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_ County, Michigan.  
Date

My commission expires: \_\_\_\_\_ Date Signature: \_\_\_\_\_  
Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

**ACKNOWLEDGMENT OF SERVICE**

I acknowledge that I have received service of the summons and complaint, together with \_\_\_\_\_ Attachments

\_\_\_\_\_ on

\_\_\_\_\_ Day, date, time

\_\_\_\_\_ on behalf of \_\_\_\_\_

Signature