

3. On information and belief, the Insurer is a corporation organized and existing under the laws of the State of Indiana. Its principal place of business is at 15 Mountain View Road, Warren, New Jersey 07059. The Insurer is licensed to conduct insurance business in the State of New York.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to Civil Practice Law and Rules (“CPLR”) § 302(a) and Insurance Law § 1101(b)(1), because plaintiff’s cause of action arises from the Insurer’s transacting business within the state, including insuring risks within the state and issuing insurance policies to a New York partnership.

5. Venue is proper pursuant to CPLR § 503, because plaintiff resides in New York County.

FACTUAL BACKGROUND

The Policy

6. On October 5, 2012, defendant Federal Insurance Company issued an insurance contract to plaintiff, bearing policy number 3528-83-06 EUC, for the policy period September 1, 2012 to September 1, 2013 (“the Policy”). A true and correct copy of the Policy is attached hereto as Exhibit A.

7. The Policy insured against Business Income Loss from Loss of Utilities at the Insured’s New York offices with a limit of \$6,500,000.

8. The Policy included coverage for Business Income with Extra Expense Insurance For Law Firms, with Additional Coverages, including Loss of Utilities, as follows:

We will pay for the actual:

- **business income** loss you incur due to the actual impairment of your **operations**;
- . . .

during the **period of restoration**, not to exceed the applicable Limit Of Insurance for Loss of Utilities in the Declarations.

. . . caused by or result[ing] from direct physical loss or damage by a covered peril to: . . .

- personal property of a utility located either inside or outside of a building; or

. . . necessary to supply your premises with: . . .

- communication supply; . . .
- power supply; . . .
- on-line access, . . .

services.

9. The Policy then provides that “[t]he additional coverage does not apply if the direct physical loss or damage is caused by or results from earthquake or **flood**” (the “Flood Exclusion”).

10. However, the Flood Exclusion in turn is itself deleted, and coverage for flood damage restored, by endorsement (Form 80-02-1698) (the “Flood Endorsement”), which is therefore controlling.

11. The Flood Endorsement provides in pertinent part:

“This Endorsement applies to the following forms: . . .

Business Income with Extra Expense

. . .

Under Additional Exclusions, and only with respect to the premises shown in the Schedule above, the Flood Exclusion is deleted from the forms shown above. . . .

E. The Flood exclusion and any **flood** limitations are not deleted and remain in effect for . . . 5. Loss of Utilities . . .

unless these Premises Coverages or Additional Coverages are shown in the Schedule above (emphasis added).

12. Because, as the Insurer conceded in a May 7, 2013 letter, “the Business Income and Extra Expense coverage form is listed in the Flood Endorsement Schedule,” and that form includes, as Additional Coverages, Loss of Utilities, the concluding language of Paragraph E of

that Endorsement applies and the Flood Exclusion remains deleted. The Flood Endorsement therefore restores coverage for business income loss, including from loss of utilities resulting from flood.

The Insured Suffers Loss of Business Income Following Hurricane Sandy

13. On October 29, 2012, Hurricane Sandy made landfall near Atlantic City, New Jersey, sending its strongest winds and storm surge into New York Harbor. The surge topped the seawall at the Battery in Lower Manhattan, leading to massive flooding in the area. This flooding caused physical damage leading to the shutdown of Con Edison East 13th Street Substation at 723 East 13th Street and Seaport No. 1 Substation at 237 Front Street.

14. As a result, the Insured's main office at One Liberty Plaza and the Insured's other downtown offices at 22 Cortlandt Street and 83 Maiden Lane lost electrical service. Steam and telephone service were also lost. These critical services were not restored for several days.

15. Because of the loss of utilities, the Insured was unable to open its main office at One Liberty Plaza for business until November 2, 2012 – a closure of approximately 88 hours – and continued to be affected by the loss of utilities until all services were restored. The Insured's other downtown offices were similarly affected.

16. As a result of these office closures, the Insured lost business income in an amount to be determined, but estimated to be in excess of \$3,000,000.

17. The Insured timely notified Insurer of its claim, but to date the Insurer has refused to comply with its obligations to the Insured.

COUNT ONE: DECLARATORY JUDGMENT

18. The Insured incorporates and reiterates the allegations in paragraphs 1 through 17.

19. The Insured suffered a loss in excess of \$3,000,000, which exceeds the deductible under the Policy, arising from lost business income caused by loss of utilities.

20. The Policy provides the Insured with coverage for that lost business income resulting from loss of utilities at the Insured's downtown offices, including loss of utilities caused by flood.

21. The loss of utilities that caused the Insured's loss of business income resulted from flooding in connection with Hurricane Sandy.

22. The Insured's loss was therefore covered by the Business Income with Extra Expense, Additional Coverages: Loss of Utilities portion of the Policy.

23. The Insurer has refused to pay the Insured's claim for this loss. There is thus an actual justiciable controversy between the parties as to their respective rights and obligations under the Policy with respect to the Insured's claim.

COUNT TWO: BREACH OF CONTRACT

24. The Insured incorporates and reiterates the allegations in paragraphs 1 through 23.

25. The Insured timely notified the Insurer of its claim and has complied with all applicable requirements for coverage under the Policy.

26. Nonetheless, the Insurer has failed to pay the Insured's claim as a result of business income loss sustained during its loss of utilities, which is covered by the Policy.

27. By reason of the foregoing, the Insurer has breached its obligations under the Policy, causing the Insured to sustain damages in an amount exceeding \$3,000,000.

PRAYER FOR RELIEF

WHEREFORE, the Insured respectfully requests that this Court:

A. On Count One, adjudge and declare that the defendant Insurer is liable to the Insured under the Policy for the Insured's claim for business income loss.

B. On Count Two, enter judgment in favor of the Insured against the Insurer (i) awarding the Insured the damages it has sustained in an amount to be established through proof at trial and (ii) awarding to the Insured interest and other costs it incurred in prosecuting this action against the Insurer, to the extent permitted by law.

C. Grant such other relief as this Court may deem just and proper.

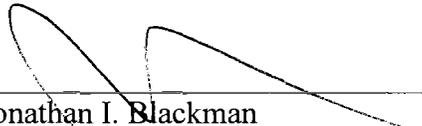
JURY DEMAND

The Insured hereby demands a trial by jury of all issues in this action.

Dated: New York, New York
November 1, 2013

Respectfully submitted,

CLEARY GOTTlieb STEEN & HAMILTON
LLP

By: 
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