

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

THE 125 BROAD CONDOMINIUM,

Plaintiff,

-against-

ARCH INSURANCE COMPANY,

Defendant.

Index No.

Summons

Date Index No. Purchased:

To the above named Defendant ARCH INSURANCE COMPANY, 300 Plaza Three, Jersey City, New Jersey 07311-1107:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue, pursuant to C.P.L.R. § 503(c), is plaintiff's principal place of business, which is 125 Broad Street, New York, New York 10004.

Dated: New York, New York  
May 16, 2014

/s/ 

Robert A. Sacks  
Mark F. Rosenberg  
Yavar Bathaee  
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The 125 Broad Condominium*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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THE 125 BROAD CONDOMINIUM,

Plaintiff,

Index No.:

-against-

ARCH INSURANCE COMPANY,

Defendant.

**COMPLAINT**

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Plaintiff The 125 Broad Condominium (“125 Broad”), by its attorneys Sullivan & Cromwell LLP, as and for its Complaint (“Complaint”) against defendant Arch Insurance Company (“Arch” or “Defendant”), alleges as follows:

**Nature of Action**

1. This is a breach of contract action arising from Defendant’s refusal to pay the vast majority of the losses covered by Policy No. PDA 0049802 00 resulting from damage to the property located at 125 Broad Street, N.Y., N.Y. (“125 Broad Street” or the “Insured Property”) caused by Superstorm Sandy on October 29-30, 2012 (the “Insured Losses”).

2. The Policy constitutes a complete and integrated contract with specified and definite terms. Defendant refuses, however, to honor the plain terms of the Policy because it contends that the Policy should be considered part of an alleged “quota share program” with other insurance policies issued by other insurers, and that Defendant, accordingly, needs only to pay a fraction of the amount of the coverage available under the Policy for the Insured Losses. Defendant takes this position notwithstanding the unambiguous language of the Policy, which (i) does not reference a “quota share program”; (ii) provides that the Policy in no event shall

constitute contributing insurance; and (iii) states that the Policy contains all of the agreements between the Insured and the Company concerning the insurance.

3. There is a specific \$5,000,000 sublimit for flood at 125 Broad Street which applies to the Insured Losses.

4. Notwithstanding the availability of at least \$5 million in coverage for the Insured Losses, Arch has paid and acknowledged coverage only for \$357,000 under the flood sublimit for 125 Broad.

5. By its refusal to pay the full amount owed by Defendant under the Policy for the Insured Losses, Defendant has breached the Policy and is liable for damages in the amount of at least \$4,643,000.

#### **PARTIES**

6. Plaintiff 125 Broad is a commercial condominium duly formed and organized under Article 9-B of the Real Property Law of the State of New York with its principal place of business in the State of New York at 125 Broad Street, New York, New York 10004. The Unit Owners of 125 Broad (collectively, the “Unit Owners”) are American Civil Liberties Union Foundation, Inc., a New York not for profit corporation; M-C 125 Broad A LLC, a New York limited liability company; M-C 125 Broad C LLC, a New York limited liability company; and Sullivan & Cromwell LLP, a New York limited liability partnership.

7. Plaintiff 125 Broad (together with the Unit Owners) owns the commercial building and property located at 125 Broad Street, which at all relevant times was insured under the Policy.

8. The Named Insured under the Policy was Cushman & Wakefield (“Cushman”), which is the Managing Agent of the Insured Property. As described in more detail

below, Cushman has assigned to Plaintiff all of its rights under the Policy with respect to the Insured Losses.

9. Defendant is a corporation duly organized and existing under the laws of the State of Missouri, with its principal place of business in the State of Missouri. Defendant has a New York City office located at One Liberty Plaza, 53rd Floor, New York, New York 10006.

10. Defendant is authorized to do business and does business in New York. Defendant is duly licensed in New York to issue insurance policies covering risks related to the ownership of real and personal property as well as associated business losses.

### **THE POLICY**

11. Upon information and belief, the Policy was drafted by Defendant, a company routinely engaged in the business of drafting and issuing insurance policies.

12. On or about May 1, 2012, Defendant issued Policy No. PDA 0049802 00, with policy period from May 1, 2012 to May 1, 2013. The Policy insured 125 Broad Street as well as other commercial properties managed by Cushman against the risk of loss due, among other things, to windstorms and resulting flooding.

13. Under the terms of the Policy, Defendant agreed to provide coverage for risks covered thereunder in exchange for the premium that Defendant charged and collected.

14. The Policy contains a specific \$5,000,000 sublimit for flood damage and loss with respect to 125 Broad Street.

15. The Policy provides that it will not apply as contributing insurance and that the Policy contains all of the agreements between the insured and the insurer concerning the insurance.

### **ISSUANCE OF THE POLICY BY DEFENDANT**

16. Cushman is in the business of managing commercial real estate. Among the properties it manages is the Insured Property.

17. Cushman secured coverage from Defendant for the Insured Property. Cushman also secured coverage under the Policy from Defendant for certain other properties that Cushman manages.

18. At the time the Policy was issued, Defendant was well aware that Cushman did not itself own the Insured Property, and understood that the premium for coverage of the Insured Property was being borne by 125 Broad.

19. Plaintiff 125 Broad is an intended third party beneficiary of the Policy.

### **THE COVERED LOSSES TO THE INSURED PROPERTY**

20. On or about October 29–30, 2012, the Insured Property sustained severe physical damage as a result of Superstorm Sandy, including damage from flooding caused by Superstorm Sandy.

21. Superstorm Sandy was one of the worst storms ever to hit the northeast United States, and coverage is provided by the Policy for damage and loss attributable to flooding caused by such a storm.

22. The total amount of the Insured Losses, prior to application of the flood sublimit for 125 Broad Street, is \$47,971,994.

23. On September 10, 2013, Cushman, as the Named Insured, submitted a sworn Proof of Loss under the Policy. The Proof of Loss submitted to Defendant attested to a total loss incurred with respect to the Insured Property of \$47,971,994; recognized a partial

payment made by Defendant of \$357,000; and sought payment of the remaining \$4,643,000 of the \$5,000,000 sublimit specifically applicable to flood at 125 Broad Street.

24. Defendant still owes at least \$4,643,000 under the Policy for the Insured Losses. Although any and all conditions to payment under the Policy have been satisfied, Defendant has steadfastly refused to comply with the terms of the Policy by paying the amount due and owing under the Policy.

**ASSIGNMENT OF CUSHMAN'S RIGHTS TO PLAINTIFF**

25. On October 22, 2013, Cushman by written contract assigned to Plaintiff 125 Broad "all rights Assignor has to insurance coverage and proceeds" with respect to the Insured Losses (the "Insurance Rights").

26. Cushman further authorized and empowered 125 Broad to commence action upon, continue action upon, and/or prosecute and collect on, the Insurance Rights with the same force and effect as if done so by Cushman in its name. The present action, therefore, is brought by Plaintiff 125 Broad as assignee of Cushman, the Named Insured under the Policy, as well as intended third party beneficiary under the Policy.

**AS AND FOR THE CAUSE OF ACTION  
(BREACH OF CONTRACT AGAINST DEFENDANT ARCH)**

27. Plaintiff 125 Broad repeats and realleges each and every allegation set forth in paragraphs 1 through 26 of this Complaint as if fully set forth herein.

28. Defendant Arch has breached its contractual obligation under the Policy to pay at least \$5,000,000 for the Insured Losses, and has instead paid only \$357,000. As a result, Defendant is liable to Plaintiff 125 Broad in the amount of at least \$4,643,000.

WHEREFORE, Plaintiff The 125 Broad Condominium prays as follows:

A. Judgment on the Cause of Action against the Defendant Arch Insurance Company in favor of 125 Broad in the amount of at least \$4,643,000; and

B. Judgment in favor of 125 Broad for the attorneys' fees, costs and disbursements of this action; prejudgment interest to be determined; and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
May 16, 2014

/s/   
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