

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

THE 125 BROAD CONDOMINIUM,

Plaintiff,

-against-

WESTPORT INSURANCE CORPORATION,

Defendant.

Index No.

Summons

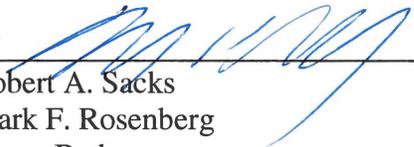
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To the above named Defendant WESTPORT INSURANCE CORPORATION, 2
Waterside Crossing, Suite 200, Windsor, Connecticut, 06095:

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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*Attorneys for Plaintiff
The 125 Broad Condominium*

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

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VERIFIED COMPLAINT

Plaintiff The 125 Broad Condominium (“125 Broad”), by its attorneys Sullivan & Cromwell LLP, as and for a Verified Complaint (“Complaint”) against defendant Westport Insurance Corporation (“Westport” 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. 31-3-74739 (the “Policy”, a copy of which is enclosed herewith as Exhibit A) 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” or any other insurance policies covering damage

to or loss at 125 Broad Street; (ii) provides that “in no event” is the Policy to “apply as contributing insurance”; and (iii) expressly states that “[t]his Policy contains all of the agreements between the Insured and the Company concerning this insurance.” (*See* Policy, Ex. A at 63, General Provisions – Section E, ¶¶ 8.B & 9.)

3. There are at least three separate and independent sublimits under the Policy applicable to the Insured Losses: (i) a \$5,000,000 sublimit for flood at properties in Zone A, which includes 125 Broad Street; (ii) another \$5,000,000 sublimit specifically for flood at 125 Broad Street; and (iii) another \$5,000,000 sublimit for flood caused by “storm surge.” (Policy, Ex. A, End’t 4).

4. Notwithstanding the availability of at least \$15 million in coverage for the Insured Losses, Westport has acknowledged coverage only under its “storm surge” sublimit, and even then has only paid to 125 Broad \$892,850 of that \$5 million sublimit.

5. By refusing 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 \$14,107,150.

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 Kansas, with its principal place of business in the State of Kansas.

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. 31-3-74739, 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 the risks covered thereunder in exchange for the premium that Defendant charged and collected. The Policy covers losses up to the “maximum limit of liability in an Occurrence” of \$250,000,000. (Policy, Ex. A, at 2, ¶ 7.)

14. The Policy contains three separate flood-related sublimits applicable to the Insured Property, each of which applies to, and must be aggregated for the purpose of calculating the amount owed by Defendant for, the Insured Losses: (1) a \$5,000,000 flood sublimit for all insured properties located in Zone A, as defined by the Policy, which includes 125 Broad Street; (2) another \$5,000,000 flood sublimit specifically for 125 Broad Street; and (3) another \$5,000,000 sublimit for flood caused by “storm surge.” (Policy, Ex. A, End’t 4.)

15. The Policy does not reference any other insurance policy and expressly provides: “In no event will this Policy apply as contributing insurance.” (Policy, Ex. A, at 63, ¶ 8.B.) It also states: “This Policy contains all of the agreements between the Insured and the Company concerning this insurance.” (*Id.* ¶ 9.)

ISSUANCE OF THE POLICY BY DEFENDANT TO CUSHMAN

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. 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 Policy's flood-related sublimits, is \$47,971,994.

23. On September 10, 2013, Cushman, as the Named Insured, submitted three separate sworn Proofs of Loss under the Policy. Each Proof of Loss submitted to Defendant attested to a total loss incurred with respect to the Insured Property of \$47,971,994 and sought payment of an applicable sublimit. One of the Proofs of Loss sought payment of the \$5,000,000 flood limit for all properties in Zone A, which includes the Insured Property. Another Proof of Loss sought payment of the \$5,000,000 sublimit for flood caused by "storm surge." The third Proof of Loss sought payment of the \$5,000,000 flood limit that is specifically applicable to 125 Broad Street.

24. Plaintiff 125 Broad has received a partial payment, under the Policy's "storm surge" sublimit, of only \$892,850, which Defendant claims represents its quota-share portion of the "storm surge" sublimit, divided by two on account of another property insured under the Policy which was also damaged by flood resulting from Superstorm Sandy. Defendant

takes the untenable position that neither the Zone A flood sublimit nor the sublimit specifically applicable to flood at 125 Broad applies.

25. Taking into account the partial payment received under the “storm surge” sublimit, Defendant still owes at least \$14,107,150 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

26. 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’).”

27. 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 WESTPORT)**

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

29. Defendant Westport has breached its contractual obligation under the Policy to pay at least \$15,000,000 for the Insured Losses, and has instead paid only \$892,850. As a result, Defendant is liable to Plaintiff 125 Broad in the amount of at least \$14,107,150.

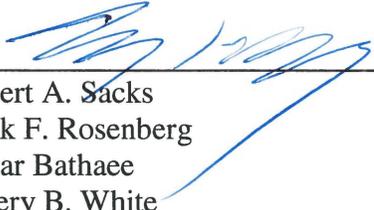
WHEREFORE, Plaintiff 125 Broad prays as follows:

A. Judgment on the First Cause of Action against the Defendant Westport Insurance Corporation in favor of 125 Broad in the amount of \$14,107,150; and

B. Judgment in favor of Plaintiff 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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