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Property

CARMAKER SAYS \$100 MILLION POLICY COVERS HYBRIDS RUINED BY SANDY
Fisker Auto. v. XL Ins. Am.

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A hybrid carmaker says its insurance policy unambiguously covers 338 vehicles, valued at around \$33 million, that were ruined when Superstorm Sandy hit the Northeast coast in October, according to a summary judgment motion filed in New York state court.

Fisker Automotive Inc. v. XL Insurance America Inc., No. 654571/2012, *motion for summary judgment filed* (N.Y. Sup. Ct., N.Y. County Jan. 31, 2013).

Fisker Automotive Inc. says in a motion before the New York County Supreme Court that its policy with XL Insurance America Inc. covers up to \$100 million in property damage caused by “named storms.”

The policy’s coverage extends to damage that occurs while the property is in transit, Fisker says.

Therefore, it clearly covers the ruined vehicles, which were at a shipping facility in Port Newark, N.J., en route to their final destinations during the Oct. 29 storm, the carmaker maintains.

It asks the court to rule in its favor as a matter of law.

Fisker, a “green car” startup based in Anaheim, Calif., produces the Fisker Karma, a luxury plug-in sports car that sells for over \$100,000.

According to the motion, it contracts with a company based in Finland to assemble the cars, which are then shipped by ocean transport to a trans-shipment facility in New Jersey.

At the trans-shipment facility, the vehicles are serviced and then transferred to trucks, which deliver them to retail dealers nationwide, the carmaker says.

During Sandy nearly all of Fisker’s entire U.S. inventory was in port at the trans-shipment facility awaiting service and distribution, the motion says.

The 338 cars were destroyed because flooding caused by the storm submerged them in over 5 feet of seawater, Fisker says.

Fisker submitted a claim to XL and alleges the insurer has unreasonably denied coverage.

XL’s policy specifically covers property damage that occurs “while awaiting and during loading and unloading and in temporary storage ... including during deviation and delay,” Fisker says.

“Straightforward application of this policy language dictates a finding that there was a loss in transit,” the motion says.

Additionally, the named-storm provision in the policy allows for the full \$100 million policy coverage, Fisker says. Unlike other provisions, it contains no sublimit, the carmaker argues.

The company asks the court to find that XL owes coverage because the losses occurred while the cars were in transit and that the full policy limits are available.

*2 Attorneys:

Plaintiff: [Stephen G. Foresta](#) and [Alison K. Roffi](#), Orrick Herrington & Sutcliffe, New York, NY; [David F. Klein](#), Orrick Herrington & Sutcliffe, Washington, D.C.

Defendant: [Christopher T. Scanlon](#), Clausen Miller PC, New York, NY

Judge: [Eileen Bransten](#)

Company: Fisker Automotive Inc.

Company: XL Insurance America Inc.

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[2013 WL 459443 \(Fisker Automotive, Inc.’s Memorandum of Law in Support of Its Motion for Partial Summary Judgment\), Trial Motion, Memorandum and Affidavit \(January 31, 2013\)](#)

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